

DEPARTMENT OF STATE REVENUE

03-20200385.MOD

Memorandum of Decision: 03-20200385
Withholding Tax
For the March 2019 and April 2019 Tax Periods

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

S-Corp is not responsible for collection fees where the levy triggering those fees did not occur until after S-Corp took corrective action and the Department cancelled the underlying liabilities.

ISSUE

I. Tax Administration - Collection Fees.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4; *P/S, Inc. v. Ind. Dep't of State Revenue*, 853 N.E.2d 1051 (Ind. Tax Ct. 2006).

Taxpayer seeks a refund of collection fees imposed on a levy of Indiana withholding tax.

STATEMENT OF FACTS

Taxpayer is an out-of-state S-corporation with no Indiana employees during the tax periods at issue. Previously, Taxpayer had Indiana employees and correctly remitted withholding tax, but it had failed to properly close the withholding tax account. The Indiana Department of Revenue ("Department") issued proposed assessments for tax, penalties, and interest after it received no withholding tax returns or remittance from Taxpayer during the taxable periods. Taxpayer did not respond to these assessments and the Department issued Demand Notices for payment. Again, Taxpayer did not respond. The tax liabilities eventually advanced to the warrant stage and the Department's third-party collection agency ("collection agency") was contacted to levy Taxpayer's accounts.

On December 30, 2019, Taxpayer contacted the collection agency and the Department. It was informed that it had not correctly closed its withholding account and that it needed to file a backdated BC-100 form indicating when it stopped collecting withholding tax. That same day, Taxpayer filed a BC-100 form with the Department. The Department acknowledged receipt of the BC-100 in a letter dated January 31, 2020, informing the Taxpayer that its registration for withholding tax was closed on December 31, 2019. However, the collection agency proceeded to levy Taxpayer's accounts to satisfy the liability. The Department received the payment on January 16, 2020.

In January 2020, Taxpayer filed a Claim for Refund (Form GA-110L) requesting refund of the entire amount (which consisted of tax, penalty, interest, and collection fees) that was levied. In March, the Department granted refund of the base tax, penalty, and interest but denied refund of the collection fees. Taxpayer filed a timely protest requesting refund of the collection fees. An administrative hearing was held, and this Memorandum results. Additional facts will be provided as necessary.

I. Tax Administration - Collection Fees.

DISCUSSION

Taxpayer protests the Department's partial refund denial. Taxpayer maintains that it did not owe any withholding tax in 2019 and that the Department's assessments and collection efforts were in error. Taxpayer asserts that it is entitled to a full refund because the Department, not the Taxpayer, should bear the costs of a levy occurring after the withholding tax account was properly closed.

If the Department reasonably believes that a taxpayer has not reported the proper amount of tax due, the Department shall propose an assessment of unpaid tax based on the best information available to the Department. IC § 6-8.1-5-1(b). The amount of the proposed assessment "is considered a tax payment not made

by the due date" and is subject to penalties and interest. *Id.* Notice of the proposed assessment shall be sent to the taxpayer stating that it has sixty (60) days in which to pay the assessment or file a written protest. IC § 6-8.1-5-1(b) and (d). If the taxpayer does not pay the proposed assessment or file a written protest in the sixty (60) day period "[t]he department shall demand payment, as provided in IC § 6-8.1-8-2(a), of any part of the proposed tax assessment, interest, and penalties" IC § 6-8.1-5-1(j).

IC § 6-8.1-8-2 provides that the Department must issue a demand notice for payment which grants the taxpayer ten days in which to "either pay the amount demanded or show reasonable cause for not paying the amount demanded." IC § 6-8.1-8-2(a). If a taxpayer "does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs," and other fees. IC § 6-8.1-8-2(b). When it has issued a tax warrant, the Department may contract with a collection agency to collect delinquent tax plus interest, penalties, collection fees, and other fees and costs. IC § 6-8.1-8-4(a). Additionally, "a collection fee of ten percent (10 percent) of the unpaid tax is added to the total amount due." *Id.* When a tax warrant is filed, "the total amount of the tax warrant becomes a judgment against the person owing the tax." IC § 6-8.1-8-2(e).

In this case, Taxpayer failed to notify the Department that it was no longer collecting withholding tax. Further, Taxpayer did not timely respond to the Department's notices of proposed assessment and demand notices. Taxpayer argues that it never received these notices because it changed addresses. Taxpayer did not provide sufficient evidence to support this claim. See *P/S, Inc. v. Ind. Dep't of State Revenue* 853 N.E.2d 1051, 1054-55 (Ind. Tax Ct. 2006) ("when an administrative agency sends notice through the regular course of mail, a presumption arises that such notice is received.")

Nonetheless, Taxpayer contacted the Department, explained that it was taking corrective action to correct its errors, and in fact took that action, all prior to the levy of Taxpayer's accounts by the collection agency. The Department's records show that the Taxpayer had closed its withholding account and that the Department had cancelled the outstanding withholding tax liabilities prior to the levy. Although the BC-100 is not the correct form to protest proposed assessments or to request refunds, the Department did in fact close the withholding account and cancel the outstanding liabilities prior to the levy in this case. Because Taxpayer contacted the Department prior to the levying of its bank account and because the withholding account was closed and its liabilities were cancelled prior to the levy by the collection agency, Taxpayer should not be held liable for the collection fees. Therefore, Taxpayer should be refunded the outstanding collection fees.

FINDING

Taxpayer's protest is sustained.

March 30, 2021

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